

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TSAI-LU SHEN,

Plaintiff,

vs.

MICHELLE LACOUR,

Defendant.

2:19-cv-01564-JAD-VCF

ORDER

THIRD MOTION TO EXTEND TIME (ECF No. 70)

Before the Court is plaintiff Tsai-Lu Shen's third motion to extend time to serve process upon defendant Michelle LaCour Pursuant to FRCP 4(m). (ECF No. 70). The motion is granted.

I. Background

On July 3, 2019, plaintiff Tsai-Lu Shen filed a complaint in the Eighth Judicial District Court of the State of Nevada for Clark County, Case No. A-19-797897-B. (ECF No. 1 at 7). On September 9, 2019, defendant Michelle LaCour filed a notice of removal to this Court. (*Id.* at 1). The Court granted plaintiff multiple extensions to serve the defendant: he now has until Wednesday, October 14, 2020. (ECF No. 61).

Plaintiff argues in his motion to extend time that he has been unable to serve defendant with a summons and a copy of the complaint. (ECF No. 70 at 3). Plaintiff also argues that there is a possibility that he will not be able to complete service by publication by October 14, 2020. (*Id.*) The Court granted plaintiff's motion to serve defendant by publication shortly after plaintiff filed the motion for the extension of time. (ECF No. 71). Defendant Michelle LaCour did not respond to the motion.

II. Analysis

"A federal court does not have jurisdiction over a defendant unless the defendant has been

1 served properly under Fed. R. Civ. P. 4.” *Direct Mail Specialists, Inc. v. Eclat Computerized Techs.,*
 2 *Inc.*, 840 F.2d 685, 686 (9th Cir. 1988). District courts retain broad discretion to permit service-of-
 3 process extensions under Rule 4(m). See *Mann v. Am. Airlines*, 324 F.3d 1088, 1090 (9th Cir. 2003).
 4 Regarding extensions, “a district court may consider factors ‘like statute of limitations bar, prejudice to
 5 the defendant, actual notice of a lawsuit, and eventual service.’” *Efaw v. Williams*, 473 F.3d 1038, 1041
 6 (9th Cir.2007) (quoting *Troxell v. Fedders of N. Am. Inc.*, 160 F.3d 381, 383 (7th Cir.1998)). “The
 7 failure of an opposing party to file points and authorities in response to any motion, except a motion
 8 under Fed. R. Civ. P. 56 or a motion for attorney’s fees, constitutes a consent to the granting of the
 9 motion.” Local Rule 7-2(d).

10 The Court exercises its discretion to extend Shen’s time to serve LaCour. The factors advising
 11 an extension of time to complete service weigh in his favor. This Court has previously found that
 12 LaCour has actual notice of the lawsuit. Shen is also in the process of serving LaCour via publication,
 13 so LaCour is likely to be served imminently. Shen has made a good cause showing that he needs
 14 additional time to serve LaCour. The defendant’s failure to file points and authorities in response to
 15 Shen’s motion for an extension of time also constitutes LaCour’s consent to the granting of the motion.
 16

17 ACCORDINGLY,

18 IT IS ORDERED that plaintiff Tsai-Lu Shen’s motion to extend time to serve defendant
 19 Michelle LaCour (ECF No. 70) is GRANTED: the time for plaintiff Tsai-Lu Shen to serve the defendant
 20 is extended to Tuesday, January 12, 2021.

21 IT IS SO ORDERED.

22 DATED this 29th day of September 2020.



23
 24 CAM FERENBACH
 25 UNITED STATES MAGISTRATE JUDGE